

## 1.1 Terms and Conditions

### 1 DEFINITIONS

- 1.1 In these terms and conditions (hereinafter collectively referred to as 'Conditions'):
- 1.2 **'Contract'** means together, the Statement of Work and these Terms and Conditions.
- 1.3 **'Controller', 'Processor', 'Data Subject', 'Personal Data', 'Personal Data Breach', 'processing' and 'appropriate technical and organisational measures'** means as defined in the Data Protection Legislation.
- 1.4 **'Customer'** means you, the corporate entity requesting Services and/or Deliverables from IRM.
- 1.5 **'Data Protection Legislation'** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
- 1.6 **'Deliverables'** means the deliverables supplied by IRM under the terms of this Contract as set out in the Statement of Work.
- 1.7 **'Delivery Dates'** means any applicable dates set out in the Statement of Work (or otherwise mutually agreed in writing) for the provision of the Services and/or the Deliverables.
- 1.8 **'Fees'** means the fees set out in the Statement of Work.
- 1.9 **'Intellectual Property Rights'** means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.10 **'Man Day'** means a period of 7.5 hours.
- 1.11 **'Restricted Information'** means any confidential or restricted information which is disclosed by one party to the other party either directly or indirectly pursuant to or in connection with any Contract (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such).
- 1.12 **'Services'** means the services specified in the Statement of Work, including any Installation Services.
- 1.13 **'Term'** has the meaning given to it in the Statement of Work.
- 1.14 **'UK Data Protection Legislation'** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.15 **'Working Day'** means any day other than a Saturday or Sunday when banks are open for business in London.
- 1.16 In this Contract, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.17 In this Contract, references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.18 Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.
- 1.19 In this Contract headings will not affect the construction of these Conditions.

### 2 BASIS OF CONTRACT

- 2.1 The Customer agrees that this Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied upon any statement, promise, representation, assurance or warranty made or given by or on behalf of IRM which is not set out in this Contract.
- 2.2 This Contract shall not create any agency or partnership between the parties or any third party.
- 2.3 These Conditions apply to this Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

### 3 SERVICES TO BE PROVIDED

- 3.1 In consideration of the Fees payable by the Customer pursuant to this Contract, IRM shall provide the Services and the Deliverables during the Term in accordance with the terms of this Contract.
- 3.2 IRM warrants that it will perform the Services with reasonable skill and care, using qualified and experienced personnel and in accordance with applicable laws.

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3.3 IRM shall use all reasonable endeavors to provide the Services and the Deliverables in accordance with their description as published or supplied by IRM in all material respects.

3.4 IRM shall use its reasonable endeavors to meet any Delivery Dates but any such Delivery Dates shall be estimates only and time for performance shall not be of the essence of this Contract.

3.5 Where IRM is unable to provide the Services and/or the Deliverables by the relevant Delivery Dates, IRM shall use reasonable endeavors to inform the Customer prior to the relevant Delivery Date and re-arrange an alternative mutually convenient date as close as is reasonably practicable to the original pre-agreed Delivery Date.

3.6 Where the Statement of Work specifies:

3.6.1 that the Term is for a period longer than 12 months; and

3.6.2 that the Services are based on Man Days,

the Customer agrees that Fees in respect of any unused Man Days will not be carried over to the following 12 months unless otherwise agreed by IRM in writing.

#### 4 SERVICE CHANGE REQUEST

4.1 If at any time before the due completion of the Services, the Customer wishes to change all or any part of the Services and/or Deliverables, then the Customer shall provide IRM with full written particulars of such proposed changes and with such further information as IRM may reasonably require in connection with such proposed changes.

4.2 IRM shall then submit to the Customer as soon as reasonably practicable a written proposal for such changes specifying what changes (if any) will be required to Fees payable by the Customer to IRM and what adjustments will be required to the Statement of Work and any applicable Delivery Dates.

4.3 Upon receipt of the revised quotation detailed in Condition 4.2, the Customer may elect either:

4.3.1 to accept such quotation, in which case this Contract shall be amended pursuant to Condition 12.5; or

4.3.2 to withdraw the proposed alterations in which case this Contract shall continue in force unchanged, and

IRM shall be entitled to make a reasonable charge for considering such changes and preparing the proposal detailed within Condition 4.2 and if the Customer's request for such changes is subsequently withdrawn but results in a delay in the performance of the Services then IRM shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay.

4.4 IRM shall not be obliged to consider or make any changes to this Contract save in accordance with the aforesaid procedure. Pending agreement on any proposed changes, the parties shall remain bound to comply with their obligations under this Contract.

#### 5 CUSTOMER OBLIGATIONS

5.1 The Customer shall:

5.1.1 ensure that the information it provides to IRM is complete and accurate in all respects and provided in a timely manner;

5.1.2 provide such assistance and cooperation as IRM may reasonably require relating to the provision of the Services and/or the Deliverables;

5.1.3 ensure that all equipment, hardware, software and/or such ancillary equipment shall be in good working order to enable IRM to carry out the Services without delay and/or interruption and to be suitable for the purposes for which it is used and complies with all relevant standards or requirements;

5.1.4 provide IRM with reasonable access to such locations to which IRM may require access in order to perform the Services;

5.1.5 inform IRM of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises in advance of IRM's consultants', employees' and authorised representatives' attendance at the Customer's premises; and

5.1.6 provide reasonable and safe working conditions for IRM's consultants, employees and authorised representatives whilst they are working at the Customer's premises.

5.2 Where the Services include technical assessments (such as but not limited to infrastructure / application / mobile / wifi / social engineering), 'hacking' and/or any activities defined as an offence under the Computer Misuse Act 1990, of the Customer's information technology infrastructure or other Customer asset, the Customer consents to IRM and/or its authorised representatives carrying out such activities and grants to IRM and/or such representatives such authority to carry out such activities. The Customer shall obtain authority for such activities from any relevant third parties, such as infrastructure hosting or management companies, and defend, indemnify and hold harmless IRM against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonably legal fees) arising out of or in connection with IRM performing activities pursuant to this Condition 5.2.

#### 6 FEES

6.1 In consideration of IRM providing the Services and/or the Deliverables, the Customer shall pay to IRM the Fees in the

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amounts and in accordance with the times set out in the Statement of Work.

- 6.2 The Fees (including any VAT payable) shall be payable within 30 days from the date of IRM's invoice(s) unless otherwise agreed in writing by the parties. For the avoidance of doubt, IRM may issue invoices for staged payments where the same has been agreed by the parties.
- 6.3 All Fees quoted to the Customer shall be exclusive of VAT, which IRM shall add to its invoices at the appropriate rate.
- 6.4 All payments due under this Contract shall be paid in full without any deduction, set-off or withholding other than as required by law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against IRM in order to justify withholding payment of any such amount in whole or in part.
- 6.5 If the Customer fails to pay IRM any sum due on the due date, the Customer will be liable to pay interest to IRM on such sum from the due date for payment until the date of actual payment of the overdue amount, at the annual rate of 4% above the then current base lending rate of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.
- 6.6 IRM reserves the right to suspend the Services and/or any part thereof until all outstanding sums owed by the Customer to IRM are settled in full.
- 6.7 In the event that any invoice is not paid by the due date, IRM reserves the right, in addition to its other remedies, to withdraw any discount which was applied to the price payable for the Services.
- 6.8 No payment of any monies, including the Fees, shall be deemed to have been received until IRM has received cleared funds.
- 6.9 Unless otherwise agreed by the parties, all payments by the Customer to IRM shall be in pounds sterling.
- 6.10 If the Customer requires a change or cancellation of previously agreed dates in respect of the Company's Services of cancellation of any Services to be performed, then the Company reserves the right to levy the following cancellation fees:
- 6.10.1 where written notice of cancellation or change of Services date is made 30 Working Days or more before the Service start date, no cancellation fee shall be payable;
- 6.10.2 where written notice of cancellation or change of Service start date is made between 10 and 29 Working Days (inclusive) before the Service date, the Customer shall pay a cancellation fee equal to 20% of the Fees relating to the Service being cancelled as set out in the Proposal Document;
- 6.10.3 where written notice of cancellation or change of Service start date is made between 5 and 9 Working Days (inclusive) before the Service date, the Customer shall pay a cancellation

fee equal to 75% of the Fees relating to the Service being cancelled as set out in the Proposal Document;

- 6.10.4 where written notice of cancellation or change of Service start date is made between 3 and 4 Working Days (inclusive) before the Service date, the Customer shall pay a cancellation fee equal to 85% of the Fees relating to the Service being cancelled as set out in the Proposal Document;
- 6.10.5 where written notice of cancellation or change of Service start date is made within 48 hours of the Service date, the Customer shall pay a cancellation fee equal to 100% of the Fees relating to the Service being cancelled as set out in the Proposal Document.
- 6.11 IRM shall be entitled to charge the Customer for all reasonable expenses, including, but not limited to, travel and subsistence, incurred by IRM and its representatives in connection with the provision of the Services. Further, all reasonable travel expenses may be charged from the location in which IRM's consultant is based to any of the Customer's locations.
- 6.12 Any payments made in advance by the Customer to IRM for the Services and/or Deliverables are non-refundable except in the case of termination of this Contract by the Customer for IRM's breach.

## 7 LIABILITY

- 7.1 Nothing in this Contract limits or excludes IRM's liability for
- 7.1.1 death or personal injury caused by its negligence;
- 7.1.2 fraud or fraudulent misrepresentation; or
- 7.1.3 anything else which cannot be limited or excluded by law.
- 7.2 Subject to Condition 7.1, IRM shall not in any circumstances be liable, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise to the Customer for any:
- 7.2.1 loss of profit;
- 7.2.2 loss of agreements or contracts;
- 7.2.3 loss of or damage to goodwill;
- 7.2.4 loss of or use or corruption of software data or information; or
- 7.2.5 any indirect, special or consequential loss, damage, costs, expenses,
- which arise out of or in connection with the provision of the Services (including any delay in providing the Services).

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7.3 Without prejudice to Condition 7.1 above, the entire liability of IRM under or in connection with this Contract, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to 100% of Fees paid or payable under this Contract during the Term.

7.4 IRM shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of IRM's obligations in relation to the Services and/or the Deliverables, if the delay or failure was due to any cause beyond IRM's reasonable control or results directly or indirectly from any act or omission of the Customer.

## 8 CONFIDENTIALITY

8.1 Except as provided by Conditions 8.2 and 8.3, each party shall at all times during the continuance of this Contract and for a period of three years after its termination:

8.1.1 keep all Restricted Information confidential and accordingly not disclose any Restricted Information to any other person; and

8.1.2 not use any Restricted Information for any purpose other than the performance of its obligations under this Contract.

8.2 A party shall not be in breach of this Condition 8 by reason of it having disclosed Restricted Information to:

8.2.1 any governmental or regulatory body that requires such disclosure, including the National Cyber Security Centre; or

8.2.2 any of either party's employees, officers, advisers, agents or representatives who need to know the other party's confidential information in order to perform the disclosing party's rights and obligations;

to such extent only as is necessary for the purposes contemplated by this Contract or as is required by law and subject in each case to each party ensuring that any recipient of the Restricted Information is aware of the confidential nature of the Restricted Information and complies with this Condition 8 as if it were a party.

8.3 The obligations of confidentiality specified in this Condition 8 shall not apply to any Restricted Information which is:

8.3.1 already known to the receiving party;

8.3.2 in the public domain other than by breach of the obligations of this Condition by either party; and/or

8.3.3 received from a third party otherwise than in breach of an obligation of confidentiality.

## 9 INTELLECTUAL PROPERTY RIGHTS

9.1 Neither party shall acquire any right, title or interest in the other's Intellectual Property Rights, unless otherwise set out in this Contract.

9.2 All Intellectual Property Rights and other rights in the Deliverables, and any documents, products and materials developed by IRM in any form (including computer programs, data, reports and specifications) shall be owned by IRM.

9.3 IRM hereby grants to the Customer a non-exclusive, royalty-free, non-transferable license (without the right to sub-license) to use IRM's Intellectual Property Rights to such extent as is necessary to enable the Customer to make reasonable use of such materials and the Services and/or the Deliverables.

9.4 The license granted at Condition 9.3 shall automatically terminate upon the expiry or termination of this Contract howsoever arising.

## 10 TERMINATION

10.1 Either party may (without limiting any other remedy) at any time terminate this Contract with immediate effect by giving written notice to the other if:

10.1.1 the other party commits any material breach of this Contract and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so;

10.1.2 an order is made or a resolution is passed for the winding up of the other party, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement or composition with his or its creditors or has a receiver or administrator appointed or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or

10.1.3 the Customer objects to a change of Supplier in accordance with Condition 11.7.6.

10.2 Without prejudice to Condition 10.1 above, IRM may terminate this Contract with immediate effect by giving written notice to the Customer if the Customer fails to make payment of any amount payable under this Contract within 60 days of the due date.

10.3 The rights to terminate this Contract given by this Condition 10 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

10.4 On the termination of this Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation under this Contract.

## 11 DATA PROTECTION

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 11 is in addition to, and

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- does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Condition 11, Applicable Laws means (for so long as and to the extent that they apply to IRM) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and IRM is the Processor.
- 11.3 During the provision of Deliverables or Services to the Customer in accordance with this Contract IRM may obtain Personal Data from the Customer.
- 11.4 Without prejudice to the generality of Condition 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable the lawful disclosure of the Personal Data to IRM for the duration and purposes of this Contract.
- 11.5 The Customer is solely responsible for responding to any request from a Data Subject and in ensuring its own compliance with its obligations under Data Protection Legislation with respect to security, breach notification, impact assessments and consultations with supervisory authorities or regulators.
- 11.6 Without prejudice to the generality of Condition 11.1, IRM shall, in relation to any Personal Data processed in connection with the performance by IRM of its obligations under this Contract:
- 11.6.1 process or use that Personal Data only for the purposes of fulfilling its obligations under this Contract, including provision of the Deliverables or Services to the Customer, unless IRM is required by Applicable Laws to otherwise process that Personal Data. Where IRM is relying on Applicable Laws as the basis for processing Personal Data, IRM shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit IRM from so notifying the Customer;
- 11.6.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 11.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 11.6.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 11.6.4.1 the Customer or IRM has provided appropriate safeguards in relation to the transfer;
- 11.6.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 11.6.4.3 IRM complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 11.6.4.4 IRM complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 11.7 To the extent that IRM uses third-party processors ("**Supplier**") to process any Personal Data under this Contract, it is agreed that:
- 11.7.1 IRM's pool of Suppliers is set out in Schedule 1;
- 11.7.2 IRM shall remain fully liable for the actions of its Suppliers at all times;
- 11.7.3 from time to time, IRM may appoint different Suppliers;
- 11.7.4 IRM shall impose on Suppliers the same or substantially similar data protection obligations as set out in this Contract;
- 11.7.5 IRM shall notify the Customer in advance of any changed or new Supplier or any material change to the processing done by Suppliers, thereby giving the Customer an opportunity to object to such changes;
- and the parties agree that:
- 11.7.6 if IRM notifies the Customer of a change to the Supplier or the processing done by Suppliers and the Customer objects to such changes because it has reasonable grounds to believe that the changes will cause or will be likely to cause the Customer to be in breach of the Data Protection Legislation, either party will be entitled to terminate this Contract without liability for either party and such a termination will be deemed to be a no-fault termination.
- 11.8 Either party may, at any time on not less than 30 days' notice, revise this Condition 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

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## 12 GENERAL

- 12.1 IRM may perform any of its obligations or exercise any of its rights hereunder by itself or through any other third party sub-contractors. Where the Services and/or the Deliverables (or any part thereof) are provided by such third party sub-contractors, any act or omission of any such sub-contractors shall be deemed to be the act or omission of IRM.
- 12.2 This Contract is personal to the Customer and the Customer shall not assign, transfer, charge, subcontract or deal in any other manner with any of its obligations under this Contract.
- 12.3 It is the Customer's responsibility to notify IRM immediately of any changes in circumstances which could render any information the Customer previously provided to IRM to be inaccurate or which would otherwise have a bearing on the advice being rendered and/or Services being performed. For the avoidance of doubt and notwithstanding any other provisions set out in these Conditions and any other agreement, contracts entered into between the parties, IRM does not accept any liability for inaccuracies, errors, losses, damages, failures, any missed timelines or problems which arises as a direct or indirect result of the Customer not providing IRM with accurate, complete and timely information and/or instructions. The Customer shall indemnify and hold harmless IRM against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonably legal fees) arising out of or in connection with any inaccurate, incomplete or untimely information being provided by the Customer.
- 12.4 No waiver by either party of any breach of this Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5 Any variation, including any additional terms and conditions, to this Contract shall only be binding when agreed in writing and signed by an authorised representative of the parties.
- 12.6 If any provision or part-provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in

part it shall be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of this Contract.

- 12.7 Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation, terrorist attack, or if any other cause beyond the reasonable control of the parties or either of them, prevents, hinders or delays either party from performing its obligations under this Contract, and all money due but unpaid under this Contract for Services and/or Deliverables provided shall be paid immediately.
- 12.8 Neither party shall (except with the prior written consent of the other during the Term and for a period of one year thereafter), solicit for employment, whether directly or indirectly, any person directly engaged with the subject matter of this Contract either as principal, agent, employee, independent contractor or any other form of employment or engagement, by the other party. For the avoidance of doubt, both parties agree that this Condition 12.8 is fair and reasonable.

## 13 NOTICE

Any notice required to be given to a party shall be given by first class post addressed to that party's trading address.

## 14 LAW AND JURISDICTION

This Contract shall be governed by and construed in accordance with English law and the English Courts shall have jurisdiction.

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